

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

It is asked whether there would be any ethical conflict in the Public Defender representing one or more defendants and the Assistant Public Defender representing one or more additional defendants where a conflict of interest exists between the defendant or defendants represented by the Public Defender and the defendant or defendants represented by the Assistant Public Defender.

OPINION

This Committee is of the opinion that it would be professionally proper for the Assistant Public Defender to represent a defendant or defendants having interests which conflict with the interests of a defendant or defendants represented by the Public Defender. The fact that the Public Defender and Assistant Public Defender occupy similar positions as public defenders is of no moment in light of the high responsibility resting on the Bar to defend indigent persons. See Canon 4 of the Canons of Professional Ethics; Opinion 55 of the Opinions of the Committee on Professional Ethics of the American Bar Association.

Opinion #34 - 11/8/66 (18-66) Topic: Advertising.
Bold Type Print in City Directory.

Digest: Improper for lawyer to have name in bold type in law lists and directories where it is different from other names in listing.

Canon: Former Canon 27

QUESTION

The publisher of a city directory, in its classified directory, (yellow pages) under a listing of "ATTORNEYS AT LAW," set forth in bold type the names of only the attorneys who, in addition to the cost of the directory, paid a special price for listing under that category. Under a listing of "LAWYERS" all the lawyers in the city were set forth, with the names of those who paid the special price again in bold type and the others in ordinary type. One of the lawyers who refused to pay the special price advised the publisher of this Association's opinion #16 - 11/1/65 (5-65), and received the following reply:

"It is our understanding that unless we are requested by letter by the Bar Association not to run lawyers names in bold face type, the choice is left up to the individual directory subscriber."

The question is whether it is professionally proper for a lawyer to authorize the listing of his name in bold type in such a directory.

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OPINION

The answer is clearly no. Listings in bold type under either the classification "ATTORNEYS AT LAW", or the classification "LAWYERS" - are in direct contravention to opinion #16 - 11/1/65 of this Association's Committee on Professional Ethics and in violation of its Canon 27. In opinion #428 - 1/5/38, the Committee on Professional Ethics of The Association of the Bar of the City of New York on a like inquiry took the same position stating:

"In the opinion of the Committee the primary effect of the proposed use of a style or size of type differing from that used for other names in a telephone directory is the presentation of the lawyer's name to the public as a lawyer. This is improper advertising and solicitation of business whether one lawyer or all lawyers are so listed. To select lawyers from a telephone directory certainly will not benefit the public. It is noted that the Committee on Professional Ethics and Grievances of the American Bar Association reached the same conclusion in Opinion 53.

"For the same reasons the proposed use of a different style or size of type in a city directory is also deemed to be professionally improper."

The Committee on Professional Ethics and Grievance of the American Bar Association has likewise condemned the use of bold face or distinctive listings in both the classified and alphabetical sections of telephone and city directories. (Opinion 284-August, 1951.)

The same ruling applies to law lists, even to law lists distributed solely to lawyers, because the solicitation of business from other lawyers is also condemned by Canon 27. (Opinion 123-12/14/34.)

The duty for adherence to the Canons of Ethics and the responsibility for the violation thereof rests and lies with the members of the legal profession. The position taken by the publisher of the directory is immaterial and does not mitigate the violation of Canon 27. However, the Committee recommends that the Bar Association of the locality where the directory is published be advised of this Committee's opinion, with a request to take whatever steps may be necessary to eliminate such improper listings in the future.

Opinion #35 - 11/8/66 (19-66) Topic: Use of Name in Testimonial.

Digest: Not improper for lawyer to permit use of his name in a testimonial which does not disclose that he is a lawyer.

Canon: Former Canon 27